

**Arthur Sarnov Candy Co., Inc. and Lily Popcorn, Inc. and Local 719, International Brotherhood of Teamsters, AFL-CIO, Petitioner.** Case 29-RC-7973

July 8, 1993

**ORDER DENYING REVIEW**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND RAUDABAUGH

The NLRB has considered the Employer's request for review of the Regional Director's Supplemental Decision and Certification of Representative (pertinent portions are attached). The request for review is denied as it raises no substantial issues warranting review.<sup>1</sup>

<sup>1</sup>In addition to the reasons given by the Regional Director for overruling the Employer's election objection, which we adopt, we note that there is no evidence that the electorate was confused by the voting procedures or unable to make an informed choice in the election. See *NLRB v. Precise Castings*, 915 F.2d 1160 (7th Cir. 1990); *Bridgeport Fittings*, 288 NLRB 124 (1988), *enfd.* 877 F.2d 180 (2d Cir. 1989).

**APPENDIX**

**SUPPLEMENTAL DECISION AND  
CERTIFICATION OF REPRESENTATIVE**

**BACKGROUND**

Following the issuance of the Decision and Direction of Election in this case on July 2, the case was transferred back to Region 29 for processing. The Board agent assigned to the case contacted the parties to arrange for the scheduling of the election and to attempt to resolve certain preelection issues, including the date, time, and place of the election; the languages in which the election notices and ballots would be printed; and whether interpreters would be made available during the election. During these discussions, the Employer, through its representative, agreed to an afternoon election on its premises and that the notices of elections and the ballots would be printed in English, Spanish, Portuguese, and Haitian Creole. The Employee requested that Spanish, Portuguese, and Haitian Creole interpreters should be made available during the election.

On July 10, pursuant to the Decision and Direction of Election, the Employer filed an *Excelsior* list<sup>4</sup> containing the names of 24 employees. Four or five of the names on the list appeared to be of French origin, and nine of the names on the list appeared to be of Hispanic origin.

On July 27, the Petitioner requested that the Region establish a morning voting session to ensure that truckdrivers employed by the Employer (who spent part of their workday away from the Employer's facility) would have an opportunity to vote in the election. The Board agent assigned to the case contacted the Employer's representative regarding this matter. The Employer indicated that it would not allow the Region to conduct a morning voting session on its prem-

ises, contending that truckdrivers would have ample opportunity to vote in an afternoon voting session.

On July 28, the Board agent assigned to this matter notified the parties in writing of the Region's intent to direct an election on August 21, between the hours of 3:30 and 4:30 p.m., on the Employer's premises; and that the Region would provide Spanish and Portuguese interpreters at the election, but would not provide a Haitian Creole interpreter. The Board agent also requested that the Employer reconsider its refusal to extend the voting period or permit a morning voting session to ensure that truckdrivers would have an opportunity to vote in an afternoon voting session.

On July 30, after further consideration, the Board agent notified the parties in writing of the Region's intention to schedule a second voting period on August 21, between the hours of 6 and 7 a.m., in a vehicle on the street outside of the Employer's premises.

On August 3, the Board agent assigned to this matter spoke by telephone with the Employer's representative. The Employer's representative indicated that he had not yet received the Region's July 28 and July 30 letters announcing an intention to direct an election on August 21. The Board agent informed the Employer's representative of the contents of the letters, and sent copies of the letters to the Employer's representative. During this telephone conversation, the Employer's representative expressed the view that the Employer might not allow the Region to conduct any election on its premises. Later on August 3, the Board agent left a message for the Employer's representative that the Region would direct both sessions be conducted in a vehicle on the street in front of the Employer's premises unless the Region received assurances that the Employer would allow the afternoon voting session to take place on its premises. On August 4, the Employer's representative gave the Region oral assurances that the Employer would allow the afternoon voting session to be conducted on its premises, but again reiterated its intention not to allow the morning voting session to be conducted on its premises.

On August 6, the Employer's representative sent the Board agent assigned to this matter a letter protesting the Region's administrative decision not to provide a Haitian Creole interpreter at the election.

On August 7, the Region sent the parties copies of the official notice of election, establishing two voting periods on August 21; the first voting session to be held between 6 and 7 a.m. in a vehicle on the street in front of the Employer's premises; the second voting session to be held between 3:30 and 4:30 p.m. in the Employer's facility. The notice of election was printed in English, Spanish, Portuguese, and Haitian Creole.

On August 13, the Board agent assigned to this matter orally informed the parties that the Region would be unable to provide a Portuguese interpreter at the election. The Employee's representative faxed a letter to the Region again requesting that it provide interpreters for Portuguese and Haitian Creole employees, as well as Spanish employees, and asserting that the "greatest number of unit employees not bilingual at the employer's facility are Portuguese."

The election was conducted on August 21 during the hours and at the locations established by the notice of election. Present at both election voting sessions were (1) a Board agent principally responsible for conducting the election, (2)

<sup>4</sup>*Excelsior Underwear*, 156 NLRB 1236 (1966).

a Spanish interpreter which the Region obtained through an outside contracting service, and (3) a Board agent fluent in Portuguese to translate for any Portuguese employee. The ballots used in the election were printed in English, Spanish, Portuguese, and Haitian Creole.

As noted above, at the counting of the ballots at the conclusion of the voting sessions, the Board agent assigned to conduct the election declared one ballot void. The void ballot, a copy of which is attached to this Supplemental Decision, was declared void because the voter had checked all three boxes on the ballot and wrote the word "yes," in English, at the top of the ballot.<sup>5</sup>

### DISCUSSION

The Employer has not supplied any evidence in support of its election objection, other than to provide copies of its August 6 and August 13 letters to the Region. Thus, the record does not reveal how many employees eligible to vote in the election were unable to read or write English, Spanish, Portuguese, or Haitian Creole; how many employees eligible to vote in the election did not speak English, Spanish, or Portuguese; or whether any employee eligible to vote in the election failed to vote or was confused in casting his or her ballot because the Board did not provide a person able to give instructions to the employees in Haitian Creole.

The Employer contends that the Region's failure to provide a Haitian Creole interpreter at the election, coupled with the single void ballot, in itself is sufficient to establish that the election should be set aside and another election conducted.<sup>6</sup> In support of its contention, the Employer relies on *St. Elizabeth Hospital v. NLRB*, 715 F.2d 1193 (7th Cir. 1983); *Thermalloy Corp.*, 233 NLRB 428 (1977); and *Gory Associated Industries*, 275 NLRB 1303 (1985).

In *St. Elizabeth Hospital*, above, the Employer contended that the representation election should be set aside on the grounds that two eligible voters were illiterate and unable to read the notices of election or the ballots. See *Franciscan Sisters Health Care Corp.*, 258 NLRB 1208 (1981), revd. in part sub nom. *St. Elizabeth*, above. The court of appeals remanded this objection for a hearing, noting that the employer had "offered evidence to substantiate its claim," and that the Regional Director had erred by relying on the mere fact that the ballots cast in the election did not reveal any confusion on the part of the voters. *St. Elizabeth*, above at 1199.

In *Thermalloy Corp.*, above, the Board set aside an election and directed a second election when the employer failed to post election notices in one of its two facilities. The Board found that the employer's failure to give all eligible voters advance notice of the election required the election be set aside.

In *Gory Associated*, above, the Board directed a second election when, contrary to the agreement of the parties prior to the election, a Haitian Creole interpreter did not arrive at election until halfway through the voting period.

Contrary to the Employer's contentions, the above-cited cases do not support the view that the Region's failure to

provide a Haitian Creole interpreter requires that the election be set aside. Both *St. Elizabeth Hospital* and *Thermalloy* were concerned with the adequacy of election notices and election ballots. The factual circumstances presented in those cases simply do not apply to the case at bar as both the notices of election and the ballots were printed in English, Spanish, Portuguese, and Haitian Creole and there is no issue as to whether the notices of election were properly and timely posted.

The Board's decision in *Gory Associated* is similarly distinguishable as in that case the parties agreed, prior to election, that a Haitian Creole interpreter was necessary in order to assist the eligible voters and that interpreter did not arrive until halfway through the voting period. In the instant case, at no time has the Employer provided evidence that any eligible voter was either unable to read Haitian Creole (or any one of the other three languages in which the notices of election and the ballots were printed) or that any voter was unable to speak English, Spanish, or Portuguese (the languages in which a Board agent or an interpreter could give instructions during the election). Thus, the record in this matter contains no evidence that any eligible voter was affected by the absence of a Haitian Creole interpreter. Indeed, as noted below, the documentary evidence suggests otherwise.

The void ballot itself suggests that a Haitian Creole interpreter would not have affected the outcome of the election. First, the voter who cast the void ballot checked all three boxes, an action which is as consistent with a voter intentionally casting a void ballot as it is with a void ballot being cast as the result of voter confusion due to language difficulties. Second, and more importantly, the voter hand-wrote the word in English (not Haitian Creole), on the ballot itself, demonstrating that the voter could write some English (one of four languages in which the notice of election and the ballot were printed).

As previously noted, during the election, the Region provided both Spanish and Portuguese interpreters during each of the voting sessions. The Region took this action because its experience conducting representation elections in the New York metropolitan area led the Region to believe that a Spanish interpreter would be necessary based on the number of names on the *Excelsior* list which appeared to have a Hispanic origin, the availability of a Board agent fluent in Portuguese to interpret at the election, and Employer's assertion in its August 13 letter that the "greatest number of unit employees not bilingual at the employer's facility are Portuguese." While the Region was able to provide a Board agent who spoke Portuguese, the Region was required to contract with an outside service to provide a Spanish interpreter.

Given the limitations of the Board's resources, it is appropriate to require a party seeking foreign language interpreters during an election to demonstrate a need for such interpreters. The Employer did not provide any demonstrated need for a Haitian Creole interpreter. Recently, in *NLRB v. Precise Castings*, 915 F.2d 1160 (7th Cir. 1990), the court of appeals upheld the practice of one Regional Office to provide election ballots in English only (while providing election notices in several languages). In the instant case, the Region not only printed the notices of election in all the languages requested by the Employer, but it printed the election ballots in those languages as well.

<sup>5</sup>No party contends that the ballot should have been counted as a valid ballot.

<sup>6</sup>Had the void ballot been cast for either the Intervenor or "Neither," then the Petitioner would have only received 10 votes out of the 20 ballots cast, and would have been deprived of a majority.

As the Employer has provided no evidence, either prior to or subsequent to the election, that a Haitian Creole interpreter was necessary to allow eligible voters to participate in the election, I shall overrule the Employer's election objection.

#### CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for Local 719, International Brotherhood of Team-

sters, AFL-CIO and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time employees employed by the Employer at its facility located at 280 West Merrick Road, West Hempstead, New York, but excluding all sales employees, office clerical employees, guards and supervisors, as defined in the Act.